

Before the  
Federal Communications Commission  
Washington, D.C. 20554

SEP 27 9 15 PM '05

DISP

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
FM Table of Allotments,	)	MB Docket No. 05-267
FM Broadcast Stations.	)	RM-10365
(St. Simons Island, Georgia)	)	
	)	
Reclassification of License	)	
of FM Station WOGK, Ocala, Florida	)	

## NOTICE OF PROPOSED RULE MAKING

Adopted: September 23, 2005

Released: September 27, 2005

Comment Date: November 18, 2005

Reply Comment Date: December 5, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Nancy C. Harper ("Harper") requesting the allotment of Channel 229C3 at St. Simons Island, Georgia, (2000 U.S. Census population of 13,381 persons) as that community's second local aural transmission service. We also consider a Petition for Rule Making filed by Murphy Broadcasting to allot Channel 229A to St. Simons Island, Georgia. Since the proposals for Channel 229A and 229C3 are mutually exclusive, we shall have to choose between these two channels. Since Channel 229C3 would provide a greater coverage area than Channel 229A, we would tentatively choose Channel 229C3. In order to accommodate the Channel 229C3 allotment, Harper requests that FM Station WOGK, Channel 229C, Ocala, Florida, be reclassified as a Class C0 station.

2. FM Station WOGK operates on Channel 229C with an effective radiated power ("ERP") of 100 kilowatts and less than the minimum Class C antenna height above average terrain ("HAAT") of 451 meters HAAT. As a result, FM Station WOGK is subject to reclassification as a Class C0 facility pursuant to the reclassification procedures adopted in the Commission's *Second Report and Order*, MM Docket No. 98-93,<sup>1</sup> Note 2 to Section 1.420(g), and Note 4 to Section 73.3573 of the Commission's rules.

3. Pursuant to the requirements set forth in Section 73.3573, Note 4, we issued an *Order to Show Cause*<sup>2</sup> directed to Ocala Broadcasting, L.L.C. ("Ocala Broadcasting"), licensee of FM Station WOGK, Ocala, Florida, affording it 30 days to express in writing an intention to seek authority to upgrade its technical facilities to preserve Class C status, or to otherwise explain why the station not be reclassified. Ocala Broadcasting filed a response stating that it would file the necessary application to implement minimum Class C standards for FM Station WOGK within 180 days of the comment deadline of the *Order to Show Cause*. Although Ocala Broadcasting filed such an application (File No. BPH-20020829ABN), the FAA ruled that the transmitter site was unsuitable. Ocala Broadcasting did not file an amendment to that application or a new application with a suitable transmitter site during a time

<sup>1</sup> See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, 15 FCC Rcd 21649 (2000).

<sup>2</sup> See *Reclassification of License of Station WOGK(FM), Ocala, Florida*, 17 FCC Rcd 1657 (MMB 2002).

period of about two years following the FAA ruling, although the licensee did file periodic updates about its efforts to find a suitable site. Subsequently, the Audio Division requested information from many applicants to show compliance with the new local radio ownership rules or requesting a waiver of these rules, including Ocala Broadcasting. The Audio Division dismissed Ocala Broadcasting's application for failure to submit the requested information and thus for failure to prosecute its application.<sup>3</sup> Therefore, in accordance with the Commission's reclassification procedures noted above, the license for FM Station WOGK will be reclassified in the context of this proceeding to specify operation on Channel 229C0 instead of Channel 229C at Ocala, Florida.

4. We find that the proposals of Harper and Murphy Broadcasting warrant consideration because either could provide a second local service to St. Simons Island. Channel 229C3 can be allotted to St. Simons Island with a site restriction of 16.4 kilometers (10.2 miles) northwest of St. Simons Island, at reference coordinates of 31-14-54 NL and 81-29-57 WL. Channel 229A can be allotted to St. Simons Island at reference coordinates of 31-09-01 NL and 81-22-11WL. To accommodate either of these proposed allotments, we propose the reclassification of FM Station WOGK to specify operation on Channel 229C0.

5. Accordingly, we seek comment on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
St. Simons Island, Georgia	224A	224A, 229C3
Ocala, Florida	224A, 229C	224A, 229C0

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before November 18, 2005, and reply comments on or before December 5, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 205454. Any counterproposal filed in this proceeding need only protect FM Station WOGK, Ocala, Florida, as a Class C0 allotment. Additionally, a copy of such comments should be served on Harper and Murphy Broadcasting, as follows

Nancy C. Harper  
490 Wright Road  
Tignall, Georgia 30668

Scott C. Cimmamon  
Law Offices of Scott C. Cinnamon, PLLC  
1090 Vermont Ave., N.W.; Suite 800, #144  
Washington, D.C.  
(Counsel for Murphy Broadcasting)

<sup>3</sup> See *Public Notice*, DA-04-3647 dated November 18, 2004.

7. Parties must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary.** Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. *See* 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.<sup>4</sup> This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

9. For further information concerning a proceeding listed above, contact R. Barthen Gorman, Media Bureau (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement.

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<sup>4</sup> *See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules.* 46 FR 11549 (February 9, 1981).

Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

## FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.
2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.
3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.
  - (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See 47 C.F.R. Section 1.420(d).)
  - (b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.
  - (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.
4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in 47 C. F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.
5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.
6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12<sup>th</sup> Street, S.W, Washington, D.C.